

ITEM: 6

SUBJECT: Antonio P and Mary R Bettencourt Living Trust, Tom Bloomfield, and F.A. Maggiore & Sons LLC, Contra Costa County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

BACKGROUND: Bettencourt Living Trust owns a 57-acre parcel identified as Contra Costa County Assessor's parcel number 011-110-026 (hereafter 'parcel'), and located at 25771 Marsh Creek Road, Brentwood, California. Tom Bloomfield leases the parcel from Bettencourt Living Trust; F.A. Maggiore & Sons LLC is a sub-lessee (the three parties will hereafter be referred to as 'Dischargers'). The parcel was used for tomato production during the 2010 and 2011 growing seasons.

The Dischargers have obtained regulatory coverage for agricultural waste discharges by enrolling in the San Joaquin County & Delta Water Quality Coalition (Coalition). Their waste discharges are governed by the Coalition Group Conditional Waiver of Waste Discharge Requirements from Irrigated Lands (Resolution R5-2011-0032, Short Term Renewal of Order R5-2006-0053, the Conditional Waiver). Upon obtaining regulatory coverage under the Conditional Waiver, the Dischargers must comply with the conditions it sets forth, including preventing conditions of pollution or nuisance.

On 1 July 2010, board staff investigated a complaint of waste discharge to waters of the state in Contra Costa County. During the investigation, staff observed sediment-laden water discharging from the Dischargers' parcel into a roadside canal. This canal discharges to Kellogg Creek, a tributary to waters of the Sacramento/San Joaquin Delta. The Executive Officer responded to the pollution discharge by issuing the Dischargers a Notice of Violation and Water Code section 13267 Order requiring submission of a technical report describing actions that would be taken to prevent future pollution discharges.

On 15 June 2011, board staff conducted a follow-up inspection in the Discovery Bay area to identify source properties discharging sediment-laden irrigation return flows to waters of the state. During the inspection, staff again observed sediment-laden water discharging from the Bettencourt parcel.

The discharges observed on 1 July 2010 and 15 June 2011 created a condition of pollution or nuisance in violation of the Basin Plan and Conditional Waiver. The discharges also violated applicable water quality objectives by raising the turbidity concentration by over 20 percent, thus violating the water quality objectives in the Basin Plan. This is also a violation of the conditions in the Conditional Waiver.

On 20 January 2012, Prosecution staff issued an ACL Complaint to the Dischargers in the amount of \$10,000. The penalty was calculated based on a per day maximum violation of \$5,000 pursuant to Water Code section 13350. The Dischargers then entered settlement negotiations with Prosecution staff. The parties could not reach settlement, and the matter was scheduled for hearing.

ISSUES: Comments on the ACL Complaint were received from the Dischargers on 12 April 2012. Prosecution staff has prepared a Response to Comments document that is part of the agenda package. The issues are summarized below.

The Dischargers assert that they did not knowingly discharge pollutants, and that they consulted with the Natural Resource Conservation Service to implement appropriate erosion and sediment controls. The Prosecution Team responds that the Dischargers committed to visually monitoring their discharges as a corrective measure after receiving the Notice of Violation (NOV) and 13267 Order for the 1 July 2010 discharge event. This and the Dischargers' other corrective measures were ineffective, which led to the later violation.

The Dischargers point out that they were not notified of the 15 June 2011 violation by board staff until 20 January 2012, which they claim did not allow them adequate time to reduce or eliminate the discharge. The Prosecution Team responds that the Dischargers had stated that they would visually monitor their discharge. By following their own plan, the Dischargers would have been immediately aware of the continuing sediment problems and been able to take corrective action.

The Dischargers point out that board staff failed to provide them with turbidity data collected during the 1 July 2010 inspection. The Prosecution Team responds that the NOV and 13267 Order associated with board staff's 1 July 2010 investigation notified the Dischargers of discharges of sediment-laden irrigation return flows that were creating nuisance conditions. This information was substantial enough to justify the NOV and 13267 Order, which resulted in the Dischargers providing a plan to take corrective actions. Inclusion of the turbidity data would neither have substantially altered the NOV and 13267 Order nor changed the Dischargers' response to it.

In their comments the Dischargers also committed to implement management practices that will eliminate all future discharges of irrigation return flows. The Prosecution Team responds that we appreciate the Dischargers' efforts to eliminate future discharges; however, the penalty associated with the ACL Complaint is intended to redress past violations.

ACLO
RECOMMENDATION: The Dischargers were issued a Notice of Violation for the first discharge event in July 2010 and given the opportunity to improve management practices to prevent future violations. Adequate improvements were not made and another violation occurred the following irrigation season. Board staff's observations and photographic evidence indicate that both waste discharges were significant in volume and impact. The Prosecution Team therefore recommends that the board adopt the proposed ACL Order assessing a \$10,000 penalty.

Mgmt. Review JK
Legal Review APT

7/8 June 2012 Meeting
Central Valley Regional Water Quality Control Board meeting
11020 Sun Center Dr. #200; Rancho Cordova, CA 95670